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Lerner And Greenberg
PO Box 2480
Hollywood, FL 33020-2480

In re Application of
HACKL
Application No.: 09/762,143
PCT No.: PCT/IB99/01516
Int. Filing Date: 02 August 1999
Priority Date: 31 July 1998
Attorney Docket No.: WLH-7945US
For: METHOD AND PLANT FOR PYROLIZING:
HYDROCARBON-CONTAINING WASTE
PRODUCTS

DECISION ON
PETITION UNDER 37 CFR 1.181

This is a decision on applicant's "Petition under 37 CFR 1.181(alternative Petition under 37 CFR 1.137(a)) Request for Withdrawal of Holding of Abandonment" filed in the United States Patent and Trademark Office (USPTO) on 17 June 2004.

BACKGROUND

On 16 July 2001, a decision on the submission of the executed declaration was mailed to applicant, refusing to accord the application status under 37 CFR 1.42 at that time. The decision stated that the declaration was signed by Eva Maria Hackl as heir of deceased inventor Leopold Hackl. It was unclear whether Ms. Hackl is the sole heir or the legal representative for the deceased inventor (See MPEP §409.01(a)) or whether there may be other heirs who are also required to also sign the declaration. Applicant was advised that applicant's attorney could file a statement certifying that Eva Maria Hackl is the only heir or the legal representative of the deceased inventor, Leopold Hackl. Applicant was given two months to respond to the Office action and advised that failure to respond would result in abandonment of the application.

On 24 February 2004, a Notification of Abandonment was mailed to applicant, incorrectly indicating the reason for the abandonment was that no reply was received in response to the 14 March 2001 Notice of Missing Parts.

On 22 March 2004, applicant, in response to the Notification of Abandonment, filed a petition including a copy of postcard bearing a USPTO mail room date-stamped of 06 April 2001 indicating that a certified English translation of the international application was deposited on that date with the USPTO.

On 10 June 2004, a decision on petition was mailed to applicant indicating that the English translation of the international application submitted on 06 April 2001 was located in the application file. However, the application was abandoned because the declaration submitted on 31 January 2001 was unacceptable as it did not meet the requirements of 37 CFR 1.497(a) and (b).

DISCUSSION

Applicant declares that USPTO decision mailed to applicant on 16 July 2001 was never received. Applicant petitions to withdraw the holding of abandonment for failure to timely respond to the 16 July 2001 decision, which he alleges was never received.

In order to establish that papers were not received, as set forth in the Official Gazette at 1156 OG 53, applicant must provide the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement). No petition fee is required.

Applicant has satisfied Items (1), (2) and (3) above with the statement that the 16 July 2001 decision was not received, that a review of the file jacket and docket record book indicating that the decision mailed on or after 16 July 2001, was not received and submission of a copy of the docket record where the non-received Office action would have been entered had it been received (that is, the docket record for 16 September 2001). Counsel has provided his docket record and explanation, showing all responses docketed for the USPTO mail date of 16 September 2001 showing that there was no record of a USPTO mailing for the present application. Thus, applicant has provided the proper showing necessary to withdraw the holding of abandonment and the petition may be properly granted at this time.

With regard to the declaration submitted on 31 January 2001, counsel states that Eva Maria Hackl is the sole heir of deceased inventor Leopold Hackl. The request for status under 37 CFR 1.42 is granted and the declaration is acceptable as it meets the requirements of 37 CFR 1.497(a) and (b).

CONCLUSION

For the reasons presented above, the Petition under 37 CFR 1.181 is **GRANTED**. The request for status under 37 CFR 1.42 is **GRANTED**.

The application will be forwarded to the United States Designated/Elected Office for further processing. The declaration is accepted under 37 CFR 1.42 and fulfills the requirements of 37 CFR 1.497(a) and (b). The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) is 31 January 2001.

Cynthia M. Kratz
Cynthia M. Kratz
Attorney Advisor
Office of PCT Legal Administration

Telephone: (571) 272-3286
Facsimile: (571) 272-0459